

HON. JAMAL N. WHITEHEAD

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

IN RE VALVE ANTITRUST LITIGATION

Case No. 2:21-cv-00563-JNW

**DECLARATION OF KENNETH J.  
RUBIN IN SUPPORT OF CONSUMER  
PLAINTIFFS' MOTION TO  
CONSOLIDATE AND APPOINT VORYS,  
SATER, SEYMOUR AND PEASE LLP AS  
INTERIM LEAD CLASS COUNSEL**

NOTE ON MOTION CALENDAR:  
October 25, 2024

1 I, Kenneth J. Rubin, declare:

2 1. I am a partner at Vorys, Sater, Seymour and Pease LLP (“Vorys”) and serve as lead  
3 counsel for Plaintiffs Sean Colvin, Susann Davis, Hope Marchionda, and Everett Stephens and the  
4 putative class (“Consumer Plaintiffs”) in the case captioned *In re Valve Antitrust Litigation*, Case  
5 No. 2:21-cv-00563-JNW.

6 2. I respectfully submit this declaration in support of the Consumer Plaintiffs’  
7 Application to appoint Vorys as interim lead class counsel. I have been actively involved in this  
8 action, am familiar with the proceedings, and have personal knowledge of the matters stated herein.

9 **VORYS’ QUALIFICATIONS AND EXPERIENCE**

10 3. Vorys, Sater, Seymour and Pease LLP provides business and legal counsel to  
11 clients throughout the United States and around the world. Since its founding in 1909, Vorys has  
12 grown into one of the largest law firms in the country, with approximately 375 attorneys who are  
13 located in ten offices in Ohio, Washington, D.C., Texas, Pennsylvania, California, London, and  
14 Berlin. Vorys represents thousands of clients, ranging from start-up businesses to Fortune 500  
15 corporations, from non-profit organizations to governmental entities and industry trade groups,  
16 and from individuals needing estate planning advice to defendants embroiled in sprawling, multi-  
17 state class action litigation. Vorys offers each of those clients—large and small—an unflagging  
18 commitment to excellent legal representation and outstanding client service.

19 4. Diversity is a core value at Vorys. Vorys’ commitment to diversity has created an  
20 atmosphere in which people thrive and are encouraged to use their different talents, perspectives,  
21 backgrounds, and experiences to serve our clients. Likewise, Vorys believes that through its  
22 commitment to diversity, we better serve the communities in which we live and work. Since 2008,  
23 Vorys has been recognized as one of the top gay-friendly workplaces in central Ohio on the Human  
24 Rights Campaign’s Corporate Equality Index. Vorys earned Mansfield Certifications in 2021,  
25 2022, 2023, and 2024. Vorys earned the Women In Law Empowerment Forum Gold Standard  
26 (“WILEF”) Certification in 2019, 2020, 2021, and 2022. Vorys is one of only 32 law firms across

1 the United States to have earned the WILEF Gold Standard Certification designation in 2022.

2 5. Particularly relevant to this case, Vorys is a leader in litigation, including both  
3 antitrust and class-action cases like this one. In connection with its litigation work, Vorys has  
4 obtained hundreds of millions of dollars in settlements and trial verdicts for thousands of plaintiffs  
5 over the years.

#### 6 **THE VORYS TEAM IN THIS CASE**

7 6. I lead the Consumer Plaintiffs' case along with my partners Timothy B. McGranor,  
8 Douglas R. Matthews, and Kara M. Mundy.

9 7. Below, I provide biographies summarizing some of our relevant experience.

10 8. **Kenneth J. Rubin:** I am a partner with the Vorys' Columbus, Ohio, office. I am  
11 a member of the Litigation Group and am the Chair of the Antitrust Subgroup. I have tried  
12 numerous cases, including as first chair at trial in federal district court in a case regarding  
13 commercial litigation and competition issues. I was co-lead counsel for plaintiffs in a multi-  
14 plaintiff commercial fraud case against a national insurance company in which the jury returned a  
15 verdict in our clients' favor. I have represented litigants in several class-action cases, both on the  
16 defense- and plaintiff-side. I have also achieved substantial class-action settlements on behalf of  
17 class members in two cases. I was named a Columbus CEO Best Lawyer for Antitrust Law in  
18 2023, a Chambers and Partners Leading Lawyer in Antitrust in 2023 and 2024, and an Ohio Super  
19 Lawyers Rising Star for Antitrust Litigation in 2016. I have been a member of the American Bar  
20 Association ("ABA"), and previously served as a vice chair on the ABA's Antitrust Law Section's  
21 Book and Treatises committee. I also served as the assistant to the chair of the section, who is also  
22 a Vorys partner. Additionally, I was a member of the Ohio State Bar Association's Antitrust  
23 Section Council. I am a *summa cum laude* graduate of The Ohio State University, Michael E.  
24 Moritz College of Law where I was also a member of the Order of the Coif. I previously served  
25 as a law clerk to the Honorable James G. Carr, then Chief Judge of the United States District Court  
26 for the Northern District of Ohio, and to the Honorable R. Guy Cole, Jr. of the United States Court

of Appeals for the Sixth Circuit. I am admitted to practice in the United States Supreme Court, U.S. Court of Appeals for the Second Circuit, U.S. Court of Appeals for the Sixth Circuit, U.S. District Court for the Northern District of Indiana, U.S. District Court for the Northern District of Ohio, U.S. District Court for the Southern District of Ohio, and the State of Ohio. Attached hereto as **Exhibit 1** is a true and correct copy of my attorney profile, as the webpage appears on the Vorys website. My representative experience includes:

- a. ***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig., 1:05-md-01720-JG-JO, E.D.N.Y.*** (I am part of the team of attorneys prosecuting antitrust claims against Visa and Mastercard on behalf of two groups of plaintiffs (23 major merchants), *Target et al. v. Visa et al.*, Case No. 1:13-cv-03477, S.D.N.Y. and *Grubhub et al. v. Visa et al.*, Case No. 1:19-cv-07273, N.D. Ill. Those cases involve issues regarding two-sided platforms.);
- b. ***Henry's Bullfrong Bees, et al. v. Sunland Trading, Inc. et al., Case No. 2:21-CV-00582-TLN-CKD, E.D. Cal.*** (I currently serve as antitrust counsel to Dutch Gold Honey, Inc. defending a putative class action alleging federal and California antitrust violations, in addition to fraud and RICO claims. That court recently granted motion to dismiss dismissing all claims with prejudice.);
- c. ***Thompson v. 1-800 Contacts, Inc., et al., Case No. 2:16-cv-01183, D. Utah*** (I previously served as co-lead counsel for Luxottica defending a class action alleging federal antitrust violations related to allegations of keyword bidding on online advertisement and search platforms. That case was settled without any acknowledgement of liability by Luxottica.);
- d. ***Certified Windshield, LLC, individual and as assignee of Bryan Eckley v. Geico Indemnity Company, Case No. 17-CA-008686, Thirteenth Judicial Circuit, Hillsborough County, Florida*** (I previously served as antitrust counsel to a national auto glass repair and replacement provider responsible for oral arguments

and motions practices opposing price fixing and monopolization claims brought under Florida state antitrust law.);

e. ***Certified Windshield, LLC, individual and as assignee of Teri Stanton v. Geico Indemnity Company and Safelite Solutions, LLC***, Case No. 18-CA-008249, Thirteenth Judicial Circuit, Hillsborough County, Florida (I previously served as antitrust counsel to a national auto glass repair and replacement provider responsible for oral arguments and motions practices opposing price fixing and monopolization claims brought under Florida state antitrust law.);

f. ***Certified Windshield, LLC, individual and as assignee of Lourdes Gonzalez v. Geico Indemnity Company and Safelite Solutions, LLC***, Case No. 18-CA-008410, Thirteenth Judicial Circuit, Hillsborough County, Florida (I previously served as antitrust counsel to a national auto glass repair and replacement provider responsible for oral arguments and motions practices opposing price fixing and monopolization claims brought under Florida state antitrust law.);

g. ***In re Fresh & Process Potatoes Antitrust Litig.***, Case No. Case No. 4:10-MD-2186-BLW, D. Idaho (I previously served as counsel to Idahoan Potatoes defending a class action alleging federal antitrust violations related to allegations of price fixing and output restrictions. That case was settled without any acknowledgement of liability by Idahoan.);

h. ***FTC v. Promedica***, Case No. 3:11-cv-00047-DAK, N.D. Ohio (I previously served as lead counsel to the University of Toledo Medical Center as a third party intervenor in an action brought by the Federal Trade Commission seeking to enjoin a hospital merger.);

i. ***United States v. Bazaarvoice, Inc.***, Case No. 13-cv-00133-WHO, N.D. Cal. (I previously served as lead counsel to Abercrombie and Fitch in its capacity as a

third-party witness to an antitrust case in which the government sought to unwind a closed merger.);

j. ***Ohio v. American Express Co., Case No. 16-1454, Supreme Court of the United States*** (I represented the Merchant Advisory Group in the filing of an *amicus curiae* brief supporting petitioners in a case involving issues regarding two-sided platforms.);

k. ***myTriggers v. Google, Case No. 09CV-14836, Franklin County, Ohio*** (I previously defended Google against claims it violated Ohio's antitrust laws.);

l. ***Verizon Advanced Data Inc. v. Frognet, Inc., Case No. 05-cv-955, S.D. Ohio*** (I was lead trial counsel for counterclaim plaintiff in claims against Verizon involving competition issues.);

m. ***Williamson v. American Mastiff Breeders Council, et al., No. 2:09-cv-00172, S.D. Ohio*** (I was lead counsel for plaintiffs/counterclaim-defendants alleging violations of the Lanham Act and defending federal antitrust claims.);

n. ***Superior Production Partnership, dba PBSI v. Gordon Auto Body Parts Co., Ltd., Case No. 13-4466, U.S. Sixth Circuit Court of Appeals*** (I was counsel to plaintiff in case alleging violations of federal antitrust law and the Lanham Act.);

o. ***Bartell, et al. v. LTF Club Operations Company, Inc., Case No. 2:14-CV-00401, S.D. Ohio*** (I was appointed co-lead class counsel with my partner, Mr. Thomas McCormick. That case settled with a significant cash recovery for class members. There were no objections to the settlement.);

p. ***Gascho v. Global Fitness Holding, LLC, Case No. 2:11-CV-00436, S.D. Ohio***, (I was appointed as co-lead class counsel with my partner Mr. Thomas McCormick as well as with attorneys from the Isaac Wiles law firm on September 30, 2013. The class-wide settlement in that case received final approval on July 16, 2014. Two objectors to the settlement appealed the final approval to the United States

Court of Appeals for the Sixth Circuit. I successfully argued the appeal for the class, 822 F.3d 269 (2016), and represented the class in defeating a petition for certiorari filed by the appellants in the United States Supreme Court.);

q. ***Tartaglia v. Global Fitness Holdings, LLC, Case No. 11 CI 1121, Boone County Circuit Court, Commonwealth of Kentucky*** (This was combined with *Gascho* for settlement purposes.).

9. **Timothy B. McGranor:** Mr. McGranor is a partner in Vorys' Columbus, Ohio office. He is a member of the Litigation Group and has significant experience in complex litigation matters. In addition to his trial work in the state and federal courts, Mr. McGranor has appeared before the courts of appeals in Ohio and the Sixth Circuit, and regularly participates in actions before the Ohio Supreme Court. He was named an Ohio Super Lawyers Rising Star for business litigation in 2007 and from 2010 to 2015, and a Columbus CEO Top Lawyer, in 2015 and 2016. He is admitted to practice in U.S. Court of Appeals for the Sixth Circuit, U.S. District Courts for the Northern and Southern Districts of Ohio and Eastern District of Michigan, and the State of Ohio. Attached hereto as **Exhibit 2** is a true and correct copy of Mr. McGranor's attorney profile, as the webpage appears on the Vorys website. His representative experience includes:

a. ***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig., 1:05-md-01720-JG-JO, E.D.N.Y.*** (Mr. McGranor is part of the team of attorneys prosecuting antitrust claims against Visa and Mastercard on behalf of two groups of plaintiffs (23 major merchants), *Target et al. v. Visa et al.*, Case No. 1:13-cv-03477, S.D.N.Y. and *Grubhub et al. v. Visa et al.*, Case No. 1:19-cv-07273, N.D. Ill. Those cases involve issues regarding two-sided platforms.);

b. ***Gateway Royalty LLC, et al. v. EAP Ohio LLC et al, Docket No. 5:20-cv-02813, N.D. Ohio*** (Mr. McGranor represents a defendant in a pending putative class action involving thousands of potential class members over claimed underpayment of oil and gas royalties.);



- 1 c. ***Grissom, et al. v. Antero Resources Corporation*, Docket No. 2:20-cv-02028, S.D.**  
 2 **Ohio** (Mr. McGranor represents a defendant in a certified class action involving  
 3 hundreds of potential class members over claimed underpayment of oil and gas  
 4 royalties.);
- 5 d. ***Henceroth, et al. v Chesapeake Exploration, LLC*, Docket No. 4:15-cv-02591,**  
 6 **N.D. Ohio** (Mr. McGranor represented a defendant in a certified class action  
 7 involving hundreds of class members of claimed underpayment of oil and gas  
 8 royalties. This case resulted in a defense judgment on summary judgment.);
- 9 e. ***Zehentbauer Family Land LP, et al. v. Chesapeake Exploration, L.L.C., et al.*,**  
 10 **Docket No. 4:15-cv-02449, N.D. Ohio** (Mr. McGranor represented a defendant in  
 11 a certified class action involving hundreds of class members of claimed  
 12 underpayment of oil and gas royalties. This case resulted in a defense judgment on  
 13 summary judgment.);
- 14 f. ***Hope Christian Fellowship, et al. v. Chesapeake Energy Corporation, et al.*,**  
 15 **Docket No. 4:15-cv-02275, N.D. Ohio**, (Mr. McGranor represented a defendant in  
 16 a putative class action over claimed underpayment of oil and gas royalties.);
- 17 g. ***Riggs v. Patriot Energy Partners, LLC, et al.*, Court of Appeals of Ohio, Seventh**  
 18 **Appellate District, Carroll County, 2014-Ohio-558** (Mr. McGranor represented  
 19 a defendant in a putative class action claiming fraud and seeking rescission of oil  
 20 and gas leases.);
- 21 h. ***Wilson, et al. v. Columbia Gas Transmission, LLC*, Docket No. 2:12-cv-01203,**  
 22 **S.D. Ohio** (Mr. McGranor represented a putative class of landowners claiming  
 23 trespass and inverse condemnation by defendant. Mr. McGranor represented more  
 24 than 400 individuals. Following counterclaims by defendant to exercise eminent  
 25 domain against hundreds of individual plaintiffs, the case was ultimately settled on  
 26 confidential terms.);



- i. ***Salyer et al v. Honda of America Mfg., Inc., et al., Docket No. 2:08-cv-01060, S.D. Ohio and Shanks v. Honda of America Mfg., Inc., et al., Docket No. 2:08-cv-01059, S.D. Ohio*** (Mr. McGranor represented a defendant manufacturer in putative class actions asserting claims under ERISA.);
- j. ***Acheson v. Express, LLC, Case No. 10-CV-135335, Superior Court, County of Santa Clara, California*** (Mr. McGranor represented a defendant in a class action asserting breach of California wage and hour laws. The case was settled on a class-wide basis.);
- k. ***Owner Operator Independent Drivers Association Inc. et al v. Comerica Bank, Docket No. 2:05-cv-00056, S.D. Ohio*** (Mr. McGranor represented a defendant bank against claims by certified class alleging breach of constructive trust and related claims.).

10. **Douglas R. Matthews:** Mr. Matthews is a partner in Vorys' Columbus, Ohio office. He is a member of the Litigation Group and the chair of the firm's electronic discovery subgroup. He has represented both corporate and public entities in a variety of litigation matters, including multiple putative class actions and complex antitrust matters. He has significant experience in complex litigation matters, including class action litigation on both the plaintiff and defendant sides. Mr. Matthews has represented numerous businesses with regard to the management and discovery of electronically stored information. In addition to his trial work in the state and federal courts, Mr. Matthews has appeared before the Sixth Circuit and participated in actions before the Ohio Supreme Court. He was named a Columbus CEO Top Lawyer in Columbus in from 2017 to 2021 and a Best Lawyer in America for Commercial Litigation from 2013 to 2025. He previously served as a law clerk to the Honorable Joseph P. Kinneary of the United States District Court for the Southern District of Ohio and to the Honorable Alan Norris of the United States Court of Appeals for the Sixth Circuit. He is admitted to practice in U.S. Court of Appeals for the Sixth Circuit, the U.S. District Court for the Southern District of Ohio, and the

State of Ohio. Attached hereto as **Exhibit 3** is a true and correct copy of Mr. Matthews' attorney profile, as the webpage appears on the Vorys website. His representative experience includes:

- a. ***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig., 1:05-md-01720-JG-JO,E.D.N.Y.*** (Mr. Matthews is part of the leadership team of attorneys prosecuting antitrust claims against Visa and Mastercard on behalf of two groups of plaintiffs (23 major merchants), *Target et al. v. Visa et al.*, Case No. 1:13-cv-03477, S.D.N.Y. and *Grubhub et al. v. Visa et al.*, Case No. 1:19-cv-07273, N.D. Ill. Those cases involve issues regarding two-sided platforms.);
- b. ***Thompson v. 1-800 Contacts, Inc., et al., Case No. 2:16-cv-01183,D. Utah*** (Mr. Matthews was previously part of the Vorys team representing Luxottica defending a class action alleging federal antitrust violations related to allegations of keyword bidding on online advertisement and search platforms. That case was settled without any acknowledgement of liability by Luxottica.);
- c. ***In re Lawnmower Engine Horsepower Marketing & Sales Practices Litigation; Case No. 2:08-md-01999,E.D. Wis.*** (Mr. Matthews was part of the Vorys leadership team representing Tecumseh Products Company, Tecumseh Power Company, and Platinum Equity LLC in a consumer class action.);
- d. ***Hoffman v. Honda of America, Mfg., Case No. 3:97cv248,S.D. Ohio*** (Mr. Matthews was part of the Vorys leadership team representing Honda of America Mfg. in an employment class action alleging gender discrimination.);
- e. ***Hoffman v. Honda of America, Mfg., Case No. 3:97cv248,S.D. Ohio*** (Mr. Matthews was part of the Vorys leadership team representing Honda of America Mfg. in an employment class action alleging gender discrimination.).

11. **Kara M. Mundy:** Ms. Mundy is a partner in Vorys' Columbus, Ohio office. She is a member of the Litigation Group and the antitrust subgroup. She regularly represents litigants

1 in complex disputes involving antitrust and class-action allegations, among other cases. She is a  
2 member of the American Bar Association's Antitrust Section and was chosen to be a Young  
3 Lawyer Representative to the Pricing Conduct Committee for the 2021-2022 program year. Ms.  
4 Mundy has significant experience counseling clients on antitrust issues related to price fixing, no-  
5 poach, no-hire and non-solicitation arrangements, compliance, competitive bidding, and mergers  
6 and acquisitions. As part of her antitrust practice, Ms. Mundy works with manufacturers and  
7 retailers on issues relating to Minimum Advertised Pricing policies and Resale Price  
8 Maintenance. She advises clients regarding vertical pricing issues and how business clients can  
9 structure their relationships with distributors and retailers to avoid violations of the Sherman,  
10 Clayton, and Robinson-Patman Acts. She regularly trains executives and sales teams on  
11 competition issues and how companies can structure their business operations and communications  
12 to lower their antitrust risk. As part of her work on behalf of clients who are navigating  
13 competition and marketplace issues, Ms. Mundy represents a Fortune 500 company bringing price  
14 gouging and Lanham Act, and state law corollary claims against unauthorized sellers of counterfeit  
15 products. She has experience obtaining preliminary and permanent injunctive relief, seizure  
16 orders, and judgments against bad actors in the marketplace, particularly those markets that have  
17 seen increased activity as a result of the global pandemic. Her notable antitrust litigation  
18 experience includes representing a contact lens seller in defending a class action alleging antitrust  
19 claims related to keyword bidding, and representing a government contractor in defending a class  
20 action alleging antitrust claims related to purported no-poach and no-hire agreements. She was  
21 named a Columbus CEO Best Lawyer for Antitrust Law in 2022 and 2023, a Columbus CEO Best  
22 Lawyer for Commercial Litigation in 2023, an Ohio Super Lawyers Rising Star for Antitrust  
23 Litigation from 2022 to 2024, and a Best Lawyers in America One to Watch for Commercial  
24 Litigation from 2022 to 2025. Ms. Mundy is admitted to practice in U.S. Court of Appeals for the  
25 Sixth Circuit, U.S. District Court for the Southern District of Ohio, and the State of Ohio. Attached  
26 hereto as **Exhibit 4** is a true and correct copy of Ms. Mundy's attorney profile, as the webpage

appears on the Vorys website. Her representative experience includes:

- a. ***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig., 1:05-md-01720-JG-JO, E.D.N.Y.*** (Ms. Mundy is part of the team of attorneys prosecuting antitrust claims against Visa and Mastercard on behalf of two groups of plaintiffs (23 major merchants), *Target et al. v. Visa et al.*, Case No. 1:13-cv-03477, S.D.N.Y. and *Grubhub et al. v. Visa et al.*, Case No. 1:19-cv-07273, N.D. Ill. Those cases involve issues regarding two-sided platforms.);
- b. ***Henry's Bullfrog Bees, et al. v. Sunland Trading, Inc. et al., Case No. 2:21-CV-00582-TLN-CKD, E.D. Cal.*** (Ms. Mundy currently serves as antitrust counsel to Dutch Gold Honey, Inc. defending a putative class action alleging federal and California antitrust violations, in addition to fraud and RICO claims. That court recently granted a motion to dismiss dismissing all claims with prejudice.);
- c. ***Thompson v. 1-800 Contacts, Inc., et al., Case No. 2:16-cv-01183, D. Utah*** (Ms. Mundy previously served as co-lead counsel for Luxottica defending a class action alleging federal antitrust violations related to allegations of keyword bidding on online advertisement and search platforms. That case was settled without any acknowledgement of liability by Luxottica.);
- d. ***Certified Windshield, LLC, individual and as assignee of Bryan Eckley v. Geico Indemnity Company, Case No. 17-CA-008686, Thirteenth Judicial Circuit, Hillsborough County, Florida*** (Ms. Mundy previously served as antitrust counsel to a national auto glass repair and replacement provider responsible for oral arguments and motions practices opposing price fixing and monopolization claims brought under Florida state antitrust law.);
- e. ***Certified Windshield, LLC, individual and as assignee of Teri Stanton v. Geico Indemnity Company and Safelite Solutions, LLC, Case No. 18-CA-***

1                   **008249, Thirteenth Judicial Circuit, Hillsborough County, Florida** (Ms.  
 2                   Mundy previously served as antitrust counsel to a national auto glass repair and  
 3                   replacement provider responsible for oral arguments and motions practices  
 4                   opposing price fixing and monopolization claims brought under Florida state  
 5                   antitrust law.);

6                   **f. *Certified Windshield, LLC, individual and as assignee of Lourdes Gonzalez***  
 7                   ***v. Geico Indemnity Company and Safelite Solutions, LLC, Case No. 18-CA-***  
 8                   ***008410, Thirteenth Judicial Circuit, Hillsborough County, Florida*** (Ms.  
 9                   Mundy previously served as antitrust counsel to a national auto glass repair and  
 10                  replacement provider responsible for oral arguments and motions practices  
 11                  opposing price fixing and monopolization claims brought under Florida state  
 12                  antitrust law.);

13                  **g. *Hunter, et al. v. Booz Allen Hamilton, et al., Case No. 2:19-cv-00411-ALM,***  
 14                  ***S.D. Ohio*** (Ms. Mundy was co-counsel for one of the defendants in this antitrust  
 15                  class action alleging that government contractors entered into illegal,  
 16                  anticompetitive no-poach and non-solicitation agreements. The litigation  
 17                  ultimately settled.).

#### 18                  **VORYS' SUCCESS ON BEHALF OF ANTITRUST AND CLASS ACTION LITIGANTS**

19                  12. Unlike many plaintiffs' firms who only litigate on one side of the "v," Vorys  
 20 regularly represents both plaintiffs and defendants in antitrust and class action litigation, which  
 21 provides Vorys with unique experience and expertise. Attached as **Exhibit 5** is a summary of  
 22 Vorys' class action capabilities.

23                  13. Vorys regularly defends clients in class action lawsuits brought in federal and state  
 24 courts across the country. Because the class action mechanism may allow thousands of individual  
 25 claims to be pursued jointly, such cases can present high-stakes challenges. Such cases also  
 26 involve unique standards and procedures that govern the proper definition of putative classes,

1 certification of classes, notice, settlement, and trial. Vorys is experienced with the requirements  
2 of the federal and state versions of Rule 23, the standing and constitutional issues that may arise  
3 in the class action context, and the case law addressing class certification issues in cases involving  
4 a wide variety of different claims, from insurance to antitrust to data security to consumer  
5 protection statutes and related common law claims. Vorys' class action litigators are proficient at  
6 creatively developing and persuasively presenting arguments related to class certification, and  
7 marshalling the lay and expert evidence that support those arguments. Vorys also has opposed  
8 certification of classes that include Vorys clients, when those clients do not wish to be part of the  
9 proposed class and are at risk of being bound by the results obtained by class counsel. These cases  
10 include complex antitrust actions.

11 14. Vorys has significant experience in counseling clients on the appropriate forum for  
12 the defense of particular class actions and have employed the Class Action Fairness Act (CAFA)  
13 and other mechanisms to remove state court class actions to federal court. When Vorys clients are  
14 involved in class actions pending in multiple federal courts, Vorys has used the Judicial Panel on  
15 Multidistrict Litigation process to coordinate the cases, avoid duplication, and reduce defense  
16 costs. Vorys has successfully advocated sequenced discovery, so that class issues may be decided  
17 before onerous, and potentially unnecessary, class-wide discovery on the merits of claims occurs.  
18 In cases where classes are certified, Vorys has worked successfully with in-house counsel to  
19 manage both liability risks and defense costs – whether the client ultimately decides to litigate the  
20 claims on the merits or to proceed with a class-wide settlement.

21 15. On the defense side, Vorys has achieved victories for companies across industries.  
22 These include negotiating a cost-effective settlement on favorable terms of class claims against  
23 national bank arising out of allegedly defective notices of repossession and sale of automobiles  
24 securing auto loans, litigating and ultimately negotiating a favorable settlement of class claims  
25 against consumer lender alleging defective disclosure of vendor single interest insurance and  
26 defective notices of repossession and sale of automobiles, and quickly and cost-effectively

1 resolving class claims on behalf of a lender on claims for fraud, breach of contract, unjust  
2 enrichment, and conversion. Vorys has also served as class counsel in two consumer class actions  
3 resulting in multi-million dollar settlements.

4 16. Despite working across industries and for both plaintiffs and defendants, Vorys also  
5 is uniquely positioned because it has a depth of experience in antitrust and has practiced in the  
6 antitrust area with great success. Vorys' antitrust experience spans both class actions and  
7 individual claims, and includes:

- 8 a. Defeating class certification on appeal to the U.S. Court of Appeals for the Second  
9 Circuit on behalf of retailers who opposed being included in a mandatory class  
10 challenging Visa and Mastercard practices related to the charging of interchange  
11 fees.
- 12 b. Representing a contact lens seller in connection with an antitrust class action arising  
13 out of internet advertising practices in *Thompson et al. v. 1-800 Contacts Inc.* (in  
14 the District Court for Utah).
- 15 c. Representing a food processor in connection with an antitrust class action arising  
16 out of alleged supply restrictions and price fixing in both direct and indirect  
17 purchaser claims (in the District Court for Idaho).
- 18 d. Defending a paving company in litigation accusing it and other West Virginia  
19 asphalt paving companies of price fixing and other anticompetitive behavior.
- 20 e. Defending antitrust and other claims brought against a major U.S. university on  
21 behalf of a putative class of former athletes. Vorys was lead counsel for the  
22 university.
- 23 f. Representing 18 major retailers, in a lawsuit filed in the Southern District of New  
24 York alleging violations of U.S. antitrust laws by Visa and MasterCard. The  
25 lawsuit alleges that Visa's and MasterCard's setting of "default" interchange, and  
26 their honor-all-cards, anti-steering, and other rules violate Section One of the



Sherman Act by preventing competition among issuing banks for merchant acceptance and charging a monopoly price to merchants who accept Visa and MasterCard. The lawsuit alleges that, but for these anti-competitive rules, banks that issue credit and debit cards would compete with each other for merchant acceptance and that such competition would lower merchants' acceptance costs. Some of the clients include: Target Corporation, Macy's, Inc., The TJX Companies, Inc., Staples, Inc., Office Depot, Inc./OfficeMax, Inc., L Brands, Inc., Victoria's Secret Stores, LLC, Big Lots Stores, Inc., Abercrombie & Fitch Co., Ascena Retail Group, Inc., Saks Inc., The Bon-Ton Stores, Inc., Chicos FAS, Inc., Luxottica, Kohl's, J.C. Penney, and American Signature.

g. Representing seven major retailers, in a lawsuit filed in the Northern District of Illinois alleging violations of U.S. antitrust laws by Visa and MasterCard. The lawsuit alleges that Visa's and MasterCard's setting of "default" interchange, and their honor-all-cards, anti-steering, and other rules violate Section One of the Sherman Act by preventing competition among issuing banks for merchant acceptance and charging a monopoly price to merchants who accept Visa and MasterCard. The lawsuit alleges that, but for these anti-competitive rules, banks that issue credit and debit cards would compete with each other for merchant acceptance and that such competition would lower merchants' acceptance costs. Vorys' clients include: GrubHub, Bob Evans Restaurants, Belk, Pandora, Leslie's Pool Supplies, Uline Inc., and BJ's Wholesale Club.

h. Representing an automobile manufacturer in an industry-wide antitrust investigation by the FTC of procurement practices.

i. Representing a major health care insurer in arbitration with a hospital relating to a "most favored nations" clause.

j. Representing at trial and on appeal of a major health insurance company

1 challenging territorial restrictions imposed on it by a national trade association.

2 k. Representing medical groups with forming alliances with other groups and the  
3 degree of integration needed to survive antitrust scrutiny.

4 l. Challenging the attempts of a major seller of credit report information to impose  
5 anticompetitive restraints in the mortgage credit reporting industry.

6 m. Defending a case alleging that rules governing men's Division I college basketball  
7 violated antitrust laws.

8 n. Representing major national retailer in settlement of antitrust litigation.

9 o. Representing a defendant drug manufacturer in an action involving multiple  
10 Sherman Act and Robinson-Patman Act claims.

11 p. Representing the president of an oil field service company as an individual  
12 defendant in a criminal price-fixing case trial and securing an acquittal.

13 q. Representing an individual in the grand jury investigation that led to the Archer-  
14 Daniels-Midland antitrust prosecution.

15 r. Representing a defendant drug manufacturer in an action involving multiple  
16 Sherman Act and Robinson-Patman Act claims.

17 s. Representing an international fast food chain restaurant in an action involving  
18 Sherman Act and contract claims.

19 t. Obtaining dismissal in the pleadings of monopolization and conspiracy claims on  
20 behalf of Internet search engine client.

21 u. Defending multiple counterclaims and defenses, including claims under the  
22 Robinson-Patman Act, arising out of distributor relationship for automotive  
23 lighting products.

24 v. Defending the world's largest provider of computer network services to libraries  
25 against monopolization claims.

26 w. Obtaining dismissal on the pleadings of all antitrust allegations in a case involving

claims of horizontal price fixing, group boycott, and conspiracy to monopolize on behalf of a breeder council.

17. Vorys' mix of plaintiff-side and defense-side work provides what I believe to be unique and valuable insights into both bars and benefits our clients no matter which side of the dispute our clients end up on.

**VORYS' EXHAUSTIVE PRE-FILING  
INVESTIGATION AND FIRST-FILED COMPLAINT**

18. Vorys filed the first antitrust action against Valve on behalf of consumers on January 28, 2021, in the Central District of California – *Colvin et al. v. Valve Corp.*, Case No. 2:21-cv-00801 (C.D. Cal. filed Jan. 28, 2021) (the “*Colvin* action”) – after eighteen months of factual investigation into Valve's business practices on its dominant Steam platform and their effects.

19. The *Colvin* action challenged Valve's imposition of its most-favored-nations clause (“MFN”) that prohibited game publishers from selling their games at lower prices on the few platforms that compete with Valve's dominant Steam platform, and thereby artificially inflated game prices to supra-competitive levels. *Colvin* Compl. ¶¶ 3–4. *Colvin* sought certification of: (i) a class of purchasers seeking damages for supra-competitive prices of PC games; (ii) a class of purchasers seeking injunctive relief; (iii) a sub-class of parents seeking damages for their purchases of PC games for their minor children; and (iv) a sub-class of parents seeking injunctive relief. *Id.* ¶¶ 98–100. Vorys filed an amended complaint on April 8.

20. Vorys spent almost 400 hours investigating this potential litigation, including retaining well-credential economists (specializing in these issues) to assist in evaluating the claims.

21. Vorys pre-litigation efforts included intense research into Valve's business, publicly available documents, chat rooms, blogs, Reddit threads, and consumer complaints. At significant time and expense, Vorys spoke with several economists and retained a well-credentialed economist specializing in these issues to vet the economic theories at play.

22. Now, four years later, Vorys has contributed almost 6,000 hours to date litigating against Valve. This includes taking four depositions in the *Wolfire* matter, participating with co-counsel on the affirmative expert team for Dr. Steve Schwartz, Ph.D., and working extensively, including in a leadership role, on the document review team following Valve's massive document productions. Indeed, Vorys attorneys spent over 1,000 hours reviewing and coding the more than 2.5 million documents produced by Valve in the *Wolfire* matter. Further, Vorys has a litigation technology department that has already worked to provide support across firms and e-discovery vendors in this litigation.

**VORYS HAS WORKED COOPERATIVELY WITH  
OTHER COUNSEL AND WILL CONTINUE TO DO SO**

23. Aware of Vorys' *Colvin* action, Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel") and Constantine Cannon LLP ("Constantine Cannon") reached out to Vorys and discussed how to consolidate the cases. After conferring with these firms, Vorys agreed the Western District of Washington would be a suitable venue and executed a stipulation with Valve to move the *Colvin* action to this Court. Following the filing of the *Colvin* action, Quinn Emanuel and Constantine Cannon filed a complaint in this district on behalf of gamers and game publishers in April 2021. *See Wolfire Games LLC et al. v. Valve Corp.*, Case No. 2:21-cv-00563-JNW. Collectively, counsel sought leave of the Court to consolidate *Colvin* and *Wolfire* into a single action, which the Court granted on May 20, 2021. Counsel then filed a consolidated amended complaint on June 11, 2021. In that complaint, counsel named *Wolfire Games, LLC* as a lead game publisher plaintiff.

24. To address the common interests of both consumers and publishers, Quinn Emanuel, Constantine Cannon, and Vorys agreed to jointly file the Consolidated Amended Class Action Complaint ("CAC"), ECF No. 34, which they did on June 11, 2021. Before filing the CAC, the three firms coordinated with Valve's counsel to enter into a stipulation, so-ordered by the Court, that consolidated the *Colvin* and *Wolfire* actions and set a schedule for filing the CAC,

1 Valve's response, and any briefing. Consolidation Order, May 20, 2021 (ECF No. 29).

2 25. Thereafter, Wilson Sonsini Goodrich & Rosati PC ("Wilson Sonsini") and  
3 Lockridge Grindal Nauen PLLP ("Lockridge") filed their own complaint against Valve on behalf  
4 of Dark Catt Studios Holdings, Inc. Case No. 2:21-cv-00563-JNW. This action was consolidated  
5 with the *Wolfire* action.

6 26. Following the consolidation of the *Dark Catt* action with the combined *Colvin* and  
7 *Wolfire* actions, the Court ruled on the collective *Wolfire* Plaintiffs' unopposed motion to appoint  
8 interim lead class counsel. (ECF No. 91). The Court noted that the firms representing the *Wolfire*  
9 Plaintiffs "collectively and individually, have (a) spent significant time investigating and  
10 challenging Defendant's alleged anticompetitive conduct and (b) possess the requisite experience,  
11 legal knowledge, and resources to reach a favorable resolution of this matter for the named  
12 Plaintiffs and the putative class." (ECF No. 92 (citing ECF No. 91 at 6–7.) The Court then  
13 established the leadership structure requested by the *Wolfire* Plaintiffs, and designated Vorys to  
14 serve as an Executive Committee, with Quinn Emanuel, Constantine Cannon, Lockridge, and  
15 Wilson Sonsini to serve as Co-Lead Class Counsel. (ECF. No 92.). Following this appointment,  
16 the *Wolfire* Plaintiffs filed a Consolidated Second Amended Class Action Complaint on March 23,  
17 2023. (ECF No. 127.)

18 27. Vorys intentionally did not seek to be appointed co-lead counsel in the *Wolfire*  
19 litigation to preserve its ability to be lead counsel for consumers if that class action was ever  
20 revived.

21 28. *Wolfire* Plaintiffs have put forward a damages model that calculates total damages  
22 on both sides while avoiding duplicative damages or inconsistent theories.

### 23 **ATTORNEY BUCHER'S COPYCAT STRATEGY**

24 29. In an affidavit submitted to the Supreme Court of the State of New York, Mr.  
25 Bucher attached a June 6, 2022 "Mass Arbitration Slide Deck," which "contemplated bringing a  
26 mass arbitration against Valve for their anti-competitive pricing restraints." *Zaiger LLC v. Bucher*

1 *Law PLLC*, William Bucher May 9, 2023 Affidavit. The Mass Arbitration Slide Deck — prepared  
2 nearly a year and a half after Vorys filed the *Colvin* action — stated Bucher’s intent for a “passive  
3 approach” to “[m]onitor court dockets for motions to compel class actions to arbitration, and  
4 *copycat existing legal theories* with potentially better advertising approach.” Mr. Bucher’s  
5 affidavit and slide deck are attached as **Exhibit 6**.

6 **COMMITMENT TO FEE, TIME, AND COST CONTROLS**

7 30. I and the other attorneys at Vorys are committed to litigating the Consumer  
8 Plaintiffs’ claims as efficiently and effectively as possible.

9 31. Vorys has sophisticated technological capabilities that will be utilized to reduce  
10 costs.

11 32. I am familiar with the Court’s expectations regarding attorneys’ fees in class  
12 actions, as reflected in orders appointing interim class counsel in other cases.

13 33. Should the Court appoint Vorys as interim co-lead class counsel, I will:

14 a. perform a monthly review of all billing records generated by Vorys for work  
15 performed on behalf of the class to ensure that there are no duplicative or inefficient  
16 entries.

17 b. require that billing be done on a monthly basis and that billing be descriptive in  
18 nature such that determinations can be made regarding duplication and efficiency.

19 I declare under penalty of perjury that the foregoing is true and correct.

20 Executed on this 4th day of October, 2024 in Columbus, Ohio.

21  
22  
23 By:



24 Kenneth J. Rubin  
25  
26

**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF recipients.

DATED: October 4, 2024.

/s/ H. Troy Romero

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